

MATTHEW D. SEGAL (CSBN 190938)
BARBARA J. NELSON (CSBN 87952)
Antitrust Division
U.S. Department of Justice
450 Golden Gate Avenue
Box 36046, Room 10-0101
San Francisco, CA 94102
Telephone: (415) 436-6660
Facsimile: (415) 436-6687

Filed December 8, 2004

Attorneys for the United States

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

BAYER AG,

Defendant.

CR 04-0331 PJH

PLEA AGREEMENT

PLEA AGREEMENT

The United States of America and Bayer AG ("defendant"), a corporation organized and existing under the laws of Germany, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands its rights:

(a) to be represented by an attorney;

(b) to be charged by Indictment;

(c) as a corporation organized and existing under the laws of Germany, to
decline to accept service of the Summons in this case, and to contest the

jurisdiction of the United States to prosecute this case against it in the
United States District Court for the Northern District of California;

(d) to plead not guilty to any criminal charge brought against it;

(e) to have a trial by jury, at which it would be presumed not guilty of the
charge and the United States would have to prove every essential element of the charged
offense beyond a reasonable doubt for it to be found guilty;

(f) to confront and cross-examine witnesses against it and to subpoena
witnesses in its defense at trial;

(g) to appeal its conviction if it is found guilty at trial;

(h) to contest whether venue properly lies in the Northern District of
California; and

(i) to appeal the imposition of sentence against it;

**AGREEMENT TO PLEAD GUILTY
AND WAIVE CERTAIN RIGHTS**

2. The defendant waives the rights set out in Paragraph 1(b)-(h) above, including all
jurisdictional defenses to the prosecution of this case, and agrees voluntarily to consent to the
jurisdiction of the United States to prosecute this case against it in the United States District
Court for the Northern District of California. The defendant also waives the right to appeal the
imposition of sentence against it, so long as the sentence imposed is consistent with the
recommendation in Paragraph 8 of this Plea Agreement. The defendant agrees to have its
sentence determined under the United States Sentencing Guidelines ("U.S.S.G.") and waives all
constitutional challenges to the validity of the U.S.S.G. The defendant waives any right it may
have to have facts that determine its statutory maximum sentence or Guidelines fine range under
the U.S.S.G. (including any facts used to determine its offense level, base fine amount,
culpability score, or any specific offense characteristic or other enhancement or adjustment
under the U.S.S.G., as well as any pecuniary gain or loss resulting from the charged offense)

1 alleged in an indictment and found by a jury beyond a reasonable doubt. Pursuant to Fed. R.
2 Crim. P. 7(b), the defendant will waive indictment and plead guilty at arraignment to a one-count
3 Information to be filed in the United States District Court for the Northern District of California.
4 The Information will charge the defendant with participating in a combination and conspiracy to
5 suppress and eliminate competition by increasing and maintaining the price of acrylonitrile-
6 butadiene rubber ("NBR") sold in the United States and elsewhere, beginning on or about May
7 14, 2002 and continuing until on or about December 31, 2002, in violation of Section One of the
8 Sherman Act (15 U.S.C. § 1).

9
10 3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to
11 the criminal charge described in Paragraph 2 above and will make a factual admission of guilt to
12 the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

13 **FACTUAL BASIS FOR OFFENSE CHARGED**

14 4. Had this case gone to trial, the United States would have presented evidence to
15 prove the following facts:

16 (a) For purposes of this Plea Agreement, the "relevant period" is that period
17 beginning on or about May 14, 2002 and continuing until on or about December 31,
18 2002. During the relevant period, the defendant was a corporation organized and existing
19 under the laws of Germany. The defendant has its principal place of business in
20 Leverkusen, Germany. During the relevant period, the defendant sold NBR in the United
21 States and elsewhere. NBR is used to manufacture, among other things, hoses, belting,
22 cable, o-rings, seals, adhesives, and sealants. The business activities of the defendant and
23 its co-conspirators in connection with the production and sale of NBR affected by this
24 conspiracy were within the flow of, and substantially affected, interstate and foreign trade

25
26 //

27 //

28 //

1 and commerce.

2 (b) During the relevant period, the defendant, through its employees,
3 participated in a conspiracy among major NBR producers, the primary purpose of which
4 was to suppress and eliminate competition by increasing and maintaining the price of
5 NBR sold in the United States and elsewhere. In furtherance of the conspiracy, the
6 defendant, through an employee, engaged in face-to-face discussions with representatives
7 of other NBR producers. During these face-to-face discussions, agreements were reached
8 to increase the price of NBR to be sold in the United States and elsewhere.

9
10 (c) During the relevant period, NBR sold by one or more of the conspirator
11 firms, and equipment and supplies necessary to the production and distribution of NBR,
12 as well as payments for NBR, traveled in interstate and foreign commerce.

13 **POSSIBLE MAXIMUM SENTENCE**

14 5. The defendant understands that the maximum penalty which may be imposed
15 against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in
16 an amount equal to the greatest of:

17 (a) \$10 million (15 U.S.C. § 1);

18 (b) twice the gross pecuniary gain the conspirators derived from the crime
19 (18 U.S.C. § 3571(c) and (d)); or

20 (c) twice the gross pecuniary loss caused to the victims of the crime by the
21 conspirators (18 U.S.C. § 3571(c) and (d)).

22
23 6. In addition, the defendant understands that:

24 (a) pursuant to U.S.S.G. § 8B1.1, the Court may order it to pay restitution to
25 the victims of the offense;

26 (b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is
27 required to order the defendant to pay a \$400 special assessment upon conviction for the
28 charged crime; and

1 (c) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of
2 probation of at least one year, but not more than five years.

3 **SENTENCING GUIDELINES**

4 7. Sentencing for the offense to be charged will be conducted pursuant to the
5 U.S.S.G. Manual in effect on the day of sentencing. Pursuant to U.S.S.G. § 1B1.8, the United
6 States agrees that self-incriminating information that the defendant provides to the United States
7 pursuant to this Plea Agreement will not be used to increase the volume of affected commerce
8 attributable to the defendant or in determining the defendant's applicable sentencing guidelines
9 range, except to the extent provided in U.S.S.G. § 1B1.8(b).
10

11 **SENTENCING AGREEMENT**

12 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant
13 agree that the appropriate disposition of this case is, and agree to recommend jointly that the
14 Court impose a sentence requiring the defendant to pay to the United States a criminal fine of
15 \$4.7 million, pursuant to 18 U.S.C. § 3571(d), payable in full before the fifteenth (15th) day after
16 the date of judgment ("the recommended sentence").

17 (a) The defendant understands that the Court will order it to pay a \$400
18 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, in
19 addition to any fine imposed.

20 (b) Neither party will recommend a term of probation, but the defendant
21 understands that the Court is free to impose a term of probation.

22 (c) Subject to the ongoing, full, and truthful cooperation of the defendant
23 described in Paragraph 12 of this Plea Agreement, and before sentencing in the case, the
24 United States will fully advise the Court of the fact, manner, and extent of the
25 defendant's cooperation and its commitment to prospective cooperation with the United
26 States' investigation and prosecutions, all material facts relating to the defendant's
27 involvement in the charged offense, and all other relevant conduct. The United States
28

1 and the defendant jointly submit that this Plea Agreement, together with the record that
2 will be created by the United States and the defendant at the plea and sentencing
3 hearings, will provide sufficient information concerning the defendant, the crime charged
4 in this case, and the defendant's role in the crime to enable the meaningful exercise of
5 sentencing authority by the Court under 18 U.S.C. § 3553. The United States and the
6 defendant agree to request jointly that the Court accept the defendant's guilty plea and
7 impose sentence on an expedited schedule as early as the date of arraignment, based upon
8 the record provided by the defendant and the United States, under the provisions of Fed.
9 R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. § 6A1.1, and Rule 18(b) of the Local Rules. The
10 Court's denial of the request to impose sentence on an expedited schedule will not void
11 this Plea Agreement.
12

13 9. The United States and the defendant agree that the applicable sentencing
14 guidelines fine range exceeds the fine contained in the recommended sentence set out in
15 Paragraph 8 above. Subject to the full and continuing cooperation of the defendant, as described
16 in Paragraph 12 of this Plea Agreement, and prior to sentencing in this case, the United States
17 agrees that it will make a motion, pursuant to U.S.S.G. § 8C4.1, for a downward departure from
18 the guidelines fine range and will request that the Court impose the recommended sentence set
19 out in Paragraph 8 of this Plea Agreement because of the defendant's substantial assistance in
20 the government's investigation and prosecutions of violations of federal criminal law in the NBR
21 industry and in another industry.
22

23 10. The United States and the defendant understand that the Court retains complete
24 discretion to accept or reject the recommended sentence provided for in Paragraph 8 of this Plea
25 Agreement.
26

27 (a) If the Court does not accept the recommended sentence, the United States
28 and the defendant agree that this Plea Agreement, except for Paragraph 10(b) below,
shall be rendered void. Neither party may withdraw from this Plea Agreement, however,

1 based on the imposition of a term of probation.

2 (b) If the Court does not accept the recommended sentence, the defendant will
3 be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant
4 withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made
5 in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or
6 this Plea Agreement or made in the course of plea discussions with an attorney for the
7 government shall not be admissible against the defendant in any criminal or civil
8 proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant
9 agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the Plea
10 Agreement, the statute of limitations period for any offense referred to in Paragraph 14 of
11 this Plea Agreement will be tolled for the period between the date of the signing of the
12 Plea Agreement and the date the defendant withdrew its guilty plea or for a period of
13 sixty (60) days after the date of the signing of the Plea Agreement, whichever period is
14 greater.
15

16 11. In light of the private civil cases filed, which potentially provide for a recovery of
17 a multiple of actual damages, the United States agrees that it will not seek a restitution order for
18 the offense charged in the Information.

19 **DEFENDANT'S COOPERATION**

20 12. The defendant and any of its subsidiaries engaged in the sale or production of
21 NBR (collectively, "related entities") will cooperate fully and truthfully with the United States in
22 the prosecution of this case, the conduct of the current federal investigation of violations of
23 federal antitrust and related criminal laws involving the manufacture or sale of NBR, and any
24 litigation or other proceedings arising or resulting from any such investigation to which the
25 United States is a party ("Federal Proceeding"). The ongoing, full, and truthful cooperation of
26 the defendant and its related entities shall include, but not be limited to:
27

28 (a) producing to the United States all non-privileged documents, information,

1 and other materials, wherever located, in the possession, custody, or control of the
2 defendant or its related entities, requested by the United States in connection with any
3 Federal Proceeding; and

4 (b) using its best efforts to secure the ongoing, full, and truthful
5 cooperation, as defined in Paragraph 13 of this Plea Agreement, of the current and
6 former directors, officers, and employees of the defendant and its related entities as
7 may be requested by the United States, but excluding Dr. Juergen Ick and Dr.
8 Stephen Pask, including making these persons available in the United States and at
9 other mutually agreed-upon locations, at the defendant's expense, for interviews
10 and the provision of testimony in grand jury, trial, and other judicial proceedings
11 in connection with any Federal Proceeding.
12

13 13. The ongoing, full, and truthful cooperation of each person described in
14 Paragraph 12(b) above will be subject to the procedures and protections of this paragraph,
15 and shall include, but not be limited to:

16 (a) producing in the United States and at other mutually agreed-upon
17 locations all non-privileged documents, including claimed personal documents,
18 and other materials, wherever located, requested by attorneys and agents of the
19 United States;

20 (b) making himself or herself available for interviews in the United
21 States and at other mutually agreed-upon locations, not at the expense of the
22 United States, upon the request of attorneys and agents of the United States;

23 (c) responding fully and truthfully to all inquiries of the United States
24 in connection with any Federal Proceeding, without falsely implicating any person
25 or intentionally withholding any information, subject to the penalties of making
26 false statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);
27

28 (d) otherwise voluntarily providing the United States with any non-

1 privileged material or information not requested in (a) - (c) of this paragraph that
2 he or she may have that is related to any Federal Proceeding;

3 (e) when called upon to do so by the United States in connection with
4 any Federal Proceeding, testifying in grand jury, trial, and other judicial
5 proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18
6 U.S.C. § 1621), making false statements or declarations in grand jury or court
7 proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction
8 of justice (18 U.S.C. § 1503); and
9

10 (f) agreeing that, if the agreement not to prosecute him or her in this
11 Plea Agreement is rendered void under Paragraph 15(c), the statute of limitations
12 period for any Relevant Offense as defined in Paragraph 15(a) will be tolled as to
13 him or her for the period between the date of the signing of this Plea Agreement
14 and six (6) months after the date that the United States gave notice of its intent to
15 void its obligations to that person under the Plea Agreement.

16 **GOVERNMENT'S AGREEMENT**

17 14. Upon acceptance of the guilty plea called for by this Plea Agreement and
18 the imposition of the recommended sentence, and subject to the cooperation requirements
19 of Paragraph 12 of this Plea Agreement, the United States agrees that it will not bring
20 further criminal charges against the defendant or any of its related entities for any act or
21 offense committed before the date of this Plea Agreement that was undertaken in
22 furtherance of an antitrust conspiracy involving the manufacture or sale of NBR. The
23 nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any
24 violation of the federal tax or securities laws, or to any crime of violence.
25

26 15. The United States agrees to the following:

27 (a) Upon the Court's acceptance of the guilty plea called for by this
28 Plea Agreement and the imposition of the recommended sentence and subject to

1 the exceptions noted in Paragraph 15(c), the United States will not bring criminal
2 charges against any current or former director, officer, or employee of the
3 defendant or any of its related entities for any act or offense committed before the
4 date of this Plea Agreement and while that person was acting as a director, officer,
5 or employee of the defendant or any of its related entities that was undertaken in
6 furtherance of an antitrust conspiracy involving the manufacture or sale of NBR
7 (“Relevant Offense”), except that the protections granted in this paragraph shall
8 not apply to Dr. Juergen Ick and Dr. Stephen Pask;
9

10 (b) Should the United States determine that any current or former
11 director, officer, or employee of the defendant or any of its related entities may
12 have information relevant to any Federal Proceeding, the United States may
13 request that person’s cooperation under the terms of this Plea Agreement by
14 written request delivered to counsel for the individual (with a copy to the
15 undersigned counsel for the defendant) or, if the individual is not known by the
16 United States to be represented, to the undersigned counsel for the defendant;
17

18 (c) If any person requested to provide cooperation under Paragraph
19 15(b) fails to comply with his or her obligations under Paragraph 13, then the
20 terms of this Plea Agreement as they pertain to that person, and the agreement not
21 to prosecute that person granted in this Plea Agreement, shall be rendered void;
22

23 (d) Except as provided in Paragraph 15(e), information provided by a
24 person described in Paragraph 15(b) to the United States under the terms of this
25 Plea Agreement pertaining to any Relevant Offense, or any information directly or
26 indirectly derived from that information, may not be used against that person in a
27 criminal case, except in a prosecution for perjury (18 U.S.C. § 1621), making a
28 false statement or declaration (18 U.S.C. §§ 1001, 1623), or obstruction of justice
(18 U.S.C. § 1503);

1 (e) If any person who provides information to the United States under
2 this Plea Agreement fails to comply fully with his or her obligations under
3 Paragraph 13 of this Plea Agreement, the agreement in Paragraph 15(d) not to use
4 that information or any information directly or indirectly derived from it against
5 that person in a criminal case shall be rendered void;

6 (f) The nonprosecution terms of this paragraph do not apply to civil
7 matters of any kind, to any violation of the federal tax or securities laws, or to any
8 crime of violence; and

9 (g) Documents provided under Paragraphs 12(a) and 13(a) shall be
10 deemed responsive to outstanding grand jury subpoenas issued to the defendant or
11 any of its related entities.
12

13 16. The United States agrees that when any person travels to the United States
14 for interviews, grand jury appearances, or court appearances pursuant to this Plea
15 Agreement, or for meetings with counsel in preparation therefor, the United States will
16 take no action, based upon any Relevant Offense, to subject such person to arrest,
17 detention, or service of process, or to prevent such person from departing the United
18 States. This paragraph does not apply to an individual's commission of perjury (18 U.S.C.
19 § 1621), making false statements (18 U.S.C. § 1001), making false statements or
20 declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice
21 (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401-402) in connection with any testimony
22 or information provided or requested in any Federal Proceeding.
23

24 17. The defendant understands that it may be subject to administrative action
25 by federal or state agencies other than the United States Department of Justice, Antitrust
26 Division, based upon the conviction resulting from this Plea Agreement, and that this Plea
27 Agreement in no way controls whatever action, if any, other agencies may take. However,
28 the United States agrees that, if requested, it will advise the appropriate officials of any

1 governmental agency considering such administrative action of the fact, manner, and
2 extent of the cooperation of the defendant and its related entities as a matter for that
3 agency to consider before determining what administrative action, if any, to take.

4 **REPRESENTATION BY COUNSEL**

5 18. The defendant has been represented by counsel and is fully satisfied that its
6 attorneys have provided competent legal representation. The defendant has thoroughly
7 reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature
8 of the charge, any possible defenses to the charge, and the nature and range of possible
9 sentences.

11 **VOLUNTARY PLEA**

12 19. The defendant's decision to enter into this Plea Agreement and to tender a
13 plea of guilty is freely and voluntarily made and is not the result of force, threats,
14 assurances, promises, or representations other than the representations contained in this
15 Plea Agreement and the Bayer Cooperation Agreement, filed separately with the Court.
16 The United States has made no promises or representations to the defendant as to whether
17 the Court will accept or reject the recommendations contained within this Plea Agreement.

18 **VIOLATION OF PLEA AGREEMENT**

19 20. The defendant agrees that, should the United States determine in good
20 faith, during the period that any Federal Proceeding is pending, that the defendant or any
21 of its related entities have failed to provide full and truthful cooperation, as described in
22 Paragraph 12 of this Plea Agreement, or have otherwise violated any provision of this Plea
23 Agreement, the United States will notify counsel for the defendant in writing by personal
24 or overnight delivery or facsimile transmission and may also notify counsel by telephone
25 of its intention to void any of its obligations under this Plea Agreement (except its
26 obligations under this paragraph), and the defendant and its related entities shall be subject
27 to prosecution for any federal crime of which the United States has knowledge, including,
28

1 but not limited to, the substantive offenses relating to the investigation resulting in this
2 Plea Agreement. The defendant and its related entities may seek court review of any
3 determination made by the United States under this Paragraph to void any of its
4 obligations under the Plea Agreement. The defendant and its related entities agree that, in
5 the event that the United States is released from its obligations under this Plea Agreement
6 and brings criminal charges against the defendant and its related entities for any offense
7 referred to in Paragraph 14 of this Plea Agreement, the statute of limitations period for
8 such offense will be tolled for the period between the date of the signing of this Plea
9 Agreement and six (6) months after the date the United States gave notice of its intent to
10 void its obligations under this Plea Agreement.
11

12 21. The defendant understands and agrees that in any further prosecution of it
13 or its related entities resulting from the release of the United States from its obligations
14 under this Plea Agreement, because of the defendant's or its related entities' violation of
15 the Plea Agreement, any documents, statements, information, testimony, or evidence
16 provided by it, its related entities, or current or former directors, officers, or employees of
17 it or its related entities to attorneys or agents of the United States, federal grand juries, or
18 courts, and any leads derived therefrom, may be used against it or its related entities in
19 any such further prosecution. In addition, the defendant unconditionally waives its right
20 to challenge the use of such evidence in any such further prosecution, notwithstanding the
21 protections of Fed. R. Evid. 410.
22

23 **ENTIRETY OF AGREEMENT**

24 22. This Plea Agreement and the Bayer Cooperation Agreement, filed
25 separately with the Court, constitute the entire agreement between the United States and
26 the defendant concerning the disposition of the criminal charge in this case. This Plea
27 Agreement cannot be modified except in writing signed by the United States and the
28 defendant.

1 23. The undersigned is authorized to enter into this Plea Agreement on behalf
2 of the defendant as evidenced by the Resolution of the Board of Directors of the defendant
3 attached to, and incorporated by reference in, this Plea Agreement.

4 24. The undersigned attorneys for the United States have been authorized by
5 the Attorney General of the United States to enter this Plea Agreement on behalf of the
6 United States.

7 25. A facsimile signature shall be deemed an original signature for the purpose
8 of executing this Plea Agreement. Multiple signature pages are authorized for the purpose
9 of executing this Plea Agreement.

10 DATED:

11
12
13 BAYER AG

14 BY: _____/s/_____
15 Dr. Roland Hartwig
16 General Counsel
17 Bayer AG
18 Corporate Center, Law & Patents
19 D-51368 Leverkusen, Germany

20 COUNSEL FOR BAYER AG

21 BY: _____/s/_____
22 Phillip A. Proger, Esq.
23 Brian K. Grube, Esq.
24 Ryan C. Thomas, Esq.
25 Jones Day
26 51 Louisiana Ave., N.W.
27 Washington, DC 20001-2113
28

Respectfully submitted,

U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION

BY: _____/s/_____
Matthew D. Segal
Barbara J. Nelson
Attorneys

450 Golden Gate Avenue
Box 36046, Room 10-0101
San Francisco, CA 94102
(415) 436-6660

Bayer



Vorstand

Bayer AG
D-51368 Leverkusen

**Decision of the Bayer AG Board of Management from
October 12, 2004**

The Bayer AG Board of Management in a meeting attended by Mr. Kühn, Dr. Oels, Dr. Pott and Mr. Wenning on October 12, 2004 has decided the following:

- A plea agreement between Bayer AG and the United States of America in the matter of a federal investigation into antitrust violations regarding acrylonitrile butadiene rubber (NBR) should be concluded and implemented. The plea agreement should in all material respects reflect the text which was presented to the Board of Management today and which is attached as an exhibit to this protocol.
- The General Counsel of Bayer AG, Dr. Roland Hartwig, is hereby authorized to sign the plea agreement in the name of Bayer AG and to deliver the plea agreement to the United States of America with such changes that are not materially adverse to Bayer AG and that Dr. Roland Hartwig determines to be in the best interests of Bayer AG, such changes to be conclusively evidenced by the signature of Dr. Roland Hartwig.
- Dr. Roland Hartwig is further authorized in connection with the implementation of the plea agreement to appear before the court on behalf of Bayer AG, to waive indictment and to plead guilty on behalf of Bayer AG.
- Finally, Dr. Roland Hartwig is authorized to take all required and appropriate measures to carry out and implement the above decisions by the Board of Management.

October 12, 2004

(Werner Wenning)

Chairman of the Board of Management

Exhibit

Bayer



Vorstand

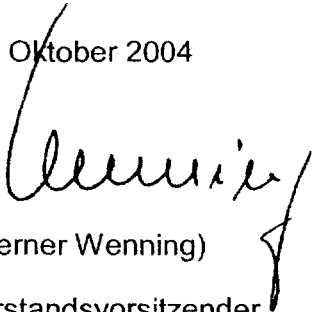
Bayer AG
D-51368 Leverkusen

Beschluss des Vorstandes der Bayer AG vom 12. Oktober 2004

Der Vorstand der Bayer AG hat in seiner Sitzung vom 12. Oktober 2004, an der die Herren Kühn, Dr. Oels, Dr. Pott und Wenning teilnahmen, folgende Beschlüsse gefasst:

- Zwischen der Bayer AG und den Vereinigten Staaten von Amerika soll ein „Plea Agreement“ zu der bundesrechtlichen Untersuchung von Kartellrechtsverstößen auf dem Gebiet Acrylnitril-Butadien-Kautschuk (NBR) abgeschlossen und umgesetzt werden. Dieses „Plea Agreement“ soll im Wesentlichen dem Vertragstext entsprechen, der dem Vorstand in seiner heutigen Sitzung vorgelegen hat und diesem Protokoll als Anlage beigefügt ist.
- Der Chefsyndikus der Bayer AG, Herr Dr. Roland Hartwig, wird hiermit bevollmächtigt, das „Plea Agreement“ im Namen der Bayer AG zu unterzeichnen und den Vereinigten Staaten von Amerika auszuhändigen. Er kann dabei auch solche Änderungen im Text durch seine Unterschrift akzeptieren und bestätigen, die für die Bayer AG nicht wesentlich nachteilig sind und von denen er überzeugt ist, dass sie im besten Interesse der Bayer AG sind.
- Herr Dr. Roland Hartwig wird hiermit weiterhin bevollmächtigt, zur Umsetzung des „Plea Agreement“ im Namen der Bayer AG vor Gericht aufzutreten, auf eine Anklageerhebung zu verzichten und sich für die Bayer AG schuldig zu bekennen.
- Herr Dr. Roland Hartwig wird hiermit schließlich auch bevollmächtigt, alle notwendigen und angemessenen Maßnahmen vorzunehmen, um die vorstehenden Beschlüsse des Vorstandes auszuführen und umzusetzen.

12. Oktober 2004


(Werner Wenning)

Vorstandsvorsitzender

Anlage